Editor's note: 81 I.D. 447; Appealed -- set aside and remanded, Civ. No. C74-179 (D. Wyo. Dec. 11, 1975), 407 F.Supp. 1301, aff'd, No. 76-1230 (10th Cir. June 7, 1977), 556 F.2d 982

MARATHON OIL COMPANY

IBLA 72-134 Decided August 14, 1974

Appeal from a decision of the Director, Geological Survey, requiring corrected reports and recalculation of royalties from variable royalty rate leases committed to the Oregon Basin Unit Agreement. (GS-45 O&G).

Affirmed.

Contracts: Construction and Operation: Generally -- Words and Phrases

In construing contracts, "including" is a word of enlargement used when it is desired to eliminate any doubt as to the inclusion in a larger class of the particular class specially mentioned.

Contracts: Construction and Operation: Generally -- Contracts: Construction and Operation: General Rules of Construction -- Oil and Gas Leases: Unit and Cooperative Agreements

Where a sentence in an oil and gas unit agreement prescribing a royalty rate is grammatically correct and as set out has a reasonable interpretation, its punctuation will not be changed.

Contracts: Construction and Operation: Generally -- Contracts: Construction and Operation: General Rules of Construction

In construing contracts, restrictive words normally apply only to the nearest antecedent.

Contracts: Construction and Operation: Generally -- Contracts: Construction and Operation: General Rules of Construction

The doctrine of practical construction does not apply unless an agreement is ambiguous.

Contracts: Construction and Operation: Generally -- Contracts: Construction and Operation: General Rules of Construction -- Oil and Gas Leases: Unit and Cooperative Agreements

An oil and gas unit agreement, as other agreements, is not ambiguous merely because the parties disagree as to its meaning if the disagreement is not based on the reasonable uncertainty of the meaning of the language.

Oil and Gas Leases: Unit and Cooperative Agreements

The Oregon Basin unit agreement does not permit a repressuring well located outside the participating area to be counted as a producing well in computing the royalty due to the United States under variable royalty rate leases committed to the unit.

Contracts: Performance or Default: Waiver and Estoppel -- Oil and Gas Leases: Unit and Cooperative Agreements -- Waiver

The Department of the Interior is not estopped from requiring the operator of an oil and gas unit agreement to submit corrected reports, to recalculate royalty payments, and to pay additional money owed the government even though it accepted lower payments in the past where the lower payments were unauthorized.

APPEARANCES: Morris G. Gray, Esq., Division Attorney, Marathon Oil Company; David C. Branand, Esq., Office of the Solicitor, Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal concerns the computation of royalty due to the United States under oil and gas leases issued by it which are committed to the Oregon Basin unit agreement entered into March 1, 1948. The leases have sliding or step scale variable rate royalties with the royalty computed on the basis of the average daily oil production per well -- the higher the average production per well, the higher will be the royalty rate. The issue is whether a repressuring (injection or input) well 1/ located outside the

---

1/ A well through which fluid or gas is introduced into the field to increase natural pressure.

participating area of the unit may be counted as a producing well for royalty purposes. If wells outside the participating area are included in the count of producing wells, the royalty due to the United States would be decreased. If the repressuring wells outside the participating area are not included then, conversely, the royalty would be increased.

Marathon Oil Company (Marathon) is currently the unit operator. In 1960, to increase the rate of production in the unit, the operator of the unit at that time commenced a waterflooding program by use of injection wells in the Oregon Basin area. Section 8(a) of the unit agreement, and the operating regulations, 30 CFR 221.1 et seq., require the operator of the unit to submit plans for drilling operations to the Regional Supervisor, United States Geological Survey (Survey), for approval. In 1961 and subsequent years the operator submitted plans relating to the several participating areas within the unit. These plans identified producing and injection wells and their location by legal subdivision. The plans were approved and, as indicated by Marathon, the waterflooding program increased production and consequently the royalty to the United States. For the purpose of computing royalty payments, Marathon counted all the injection wells within and without the participating area.

Marathon objected to a request dated November 7, 1969, by a Survey accountant to furnish corrected reports which would exclude from the well count the injection wells outside the participating areas of the unit. Thereafter, the Regional Oil and Gas Supervisor by decision dated December 29, 1969, announced that only those injection wells within the participating area should be counted for royalty computations, and that back royalties were due for the years 1961-69. Marathon appealed to the Director of the Survey, who by decision dated September 20, 1971, affirmed the Supervisor's decision. The Director held that section 13 of the unit agreement prescribing the royalty computation permitted the counting of injection wells within the participating areas of the unit as producing wells, but did not permit the inclusion of injection wells outside the participating areas. He concluded that the unit agreement term controlled and no operational decisions such as approving the location of injection wells could alter the agreement. He explained the failure of Survey to make this determination earlier as follows:

> It is unfortunate that staffing limitations caused by budget restrictions prevent the Branch of Oil and Gas Operations from maintaining continuous audits on its royalty accounts. These limitations have forced the Branch to resort to the post auditing of accounts on an as time permits basis. A recent audit of the Oregon Basin unit account exposed the fact that 13 wells outside of the controlling participating area were being

> included in the well count used to compute royalties due. Prior to that time, the Survey's accounting department accepted appellant's monthly unit reports as filed and assumed that all wells included in appellant's Form 0201, "Individual Well Production Record" headed "Oregon Basin Unit North Embar-Tensleep Participating Area," were located within the controlling participating areas. No effort was made to check the actual location to see that all wells were within the controlling participating area.
>
> The error involved in this case is one which would be difficult for accounting personnel to detect. It was discovered by an accounting clerk who questioned the fact that a lease which included an injection well did not receive an allocation of unitized production. The resulting investigation of the situation exposed the fact that, contrary to the specific language of the unit agreement, a total of 13 unqualified injection wells, i.e., wells located outside the controlling participating areas, were being included in the well count for royalty purposes. As stated by the appellant, its reports were accepted by the Survey in good faith. However, these reports are now known to have been erroneous and the Supervisor has requested correction.

Marathon objects to this explanation asserting that the locations of all the injection wells are shown on survey maps and should have been ascertainable by accounting personnel. Basically, it makes the following contentions: (1) the clear language of the Oregon Basin unit agreement means that any well, wherever located, actually used for repressuring counts as a producing well; (2) application of rules of contract intrepretation demonstrates the fallacy of the Director's decision; (3) the decision is contrary to the purposes of the unit agreement; (4) the decision is contrary to the practical construction of the agreement by the parties; and

(5) because the government has acquiesced in Marathon's interpretation of the agreement by accepting royalty payments based on inclusion of all repressuring wells, it is now, in effect, estopped from asserting a different construction.

The questions raised here revolve specifically around the meaning of section 13 of the unit agreement, which states:

> Subject to approval of the Supervisor, in accordance with the operating regulations, all oil wells shut in for conservation purposes in each participating area, including productive oil wells with excess gas-oil ratios and any and all wells of any character actually used for repressuring or recycling, shall be counted as producing oil wells; * * *.

In support of its first contention, that the clear language of the unit agreement means that any repressuring well, wherever located, counts as a producing well, Marathon submits the following construction (the separations in the text indicate separate clauses or thoughts):

> Subject to approval of the Supervisor, in accordance with the operating regulations,
>
> all oil wells shut in for conservation purposes in each participating area, including productive oil wells with excess gas-oil ratios
>
> and
>
> any and all wells of any character actually used for repressuring or recycling,

shall be counted as producing oil wells * * *.

This reading, in contrast to the Survey's interpretation, makes "any and all wells * * * recycling" an independent clause, and includes in the royalty determination all repressuring wells wherever located.

To reach the above interpretation, Marathon notes that federal oil and gas leases are subject to ordinary rules of contract construction, see Reading Steel Casting Co. v. United States, 268 U.S. 186, 188 (1925); Standard Oil Co. v. Hickel, 317 F. Supp. 1192, 1197 (D. Alas. 1970), aff'd, 450 F.2d 493 (9th Cir. 1971); Amoco Production Co., 10 IBLA 215, 218 (1973), and applies three rules of contract construction to the sentence. The rules are: (1) "including" is a word of enlargement, not limitation; (2) punctuation may be inserted to give effect to the intention of the parties; and (3) restrictive words apply only to their nearest antecedent. Although we disagree only slightly with Marathon's statement of these rules, its application of them is incorrect.

As Marathon states in its appeal, "including" is a word of enlargement. American Federation of Television and Radio Artists, Washington-Baltimore Local v. NLRB,
462 F.2d 887, 889-90 (D.C. Cir. 1972); Argosy, Ltd. v. Hennigan, 404 F.2d 14, 20 (5th Cir.

1968). "[I]nclud[ing] is used when it is desired to eliminate any doubt as to the inclusion in a larger class of the particular class specially mentioned." United States v. Gertz, 249 F.2d 662, 666 (9th Cir. 1957); Federal Land Bank of St. Paul v. Bismarck Lumber Co.,
314 U.S. 95, 100 (1941). For example, in the phrase "vehicles, for the purposes of this statute, includes tractors, * * *," "vehicles" is the larger class, and "tractors," the specially mentioned class. Any time "vehicle" is used, a "tractor" would be understood to be a "vehicle."

Here, the larger class is "oil wells shut in for conservation purposes." In reference to section 13 set out above, both the Survey and Marathon agree that "productive wells with excess oil and gas ratios" is a class specially mentioned and encompassed in the larger class of "oil wells shut in for conservation purposes." Marathon maintains that "wells used for repressuring" is not a specially mentioned class, but an independent, second "larger class." Although it maintains that this construction is evident from a first reading of the whole sentence, to clarify this meaning, they would correct the "obvious omission of a needed comma after ratio * * *." (Appellant's Memorandum Brief at 13.) We agree that if it is proper to insert the "missing" comma, the clause containing the phrase "repressuring wells" would be an independent clause -- not part of the "including" clause.

Marathon states "that punctuation, or its absence, is always subordinate to the text of contracts * * * and that courts may insert necessary punctuation to give effect to the intention of the parties." (Citations omitted.) (Appellant's Memorandum Brief at 14.) Marathon fails to note the corollaries of the rule it relies on. Existing punctuation may be used as an aid in interpretation. Plymouth Mutual Life Insurance Co. v. Illinois Mid-Continent Life Insurance Co., 378 F.2d 389, 391-92 (3d Cir. 1967). Where a sentence is grammatically correct and as set out has a reasonable interpretation, the punctuation will not be changed. Hol-Gar Manufacturing Corp. v. United States, 351 F.2d 972, 975-76 (Ct. Cl. 1965). This rule defines the parameters in which judicial or administrative review can alter an agreement. Marathon does not contend that the sentence is grammatically incorrect and we find no such deficiency after our examination of the sentence. Since there is no grammatical deficiency, and as set out, the sentence has a reasonable meaning, we decline to insert the "missing" comma. We find that the "repressuring wells" is a specially mentioned class of the larger class of "oil wells shut in for conservation purposes." We reach this conclusion even though, as Marathon asserts, a repressuring well may not normally be considered an oil well shut in for conservation purposes. An "including" clause is properly used to encompass categories which might not be contained in the ordinary meaning of a word. Willheim v. Murchison, 342 F.2d 33, 42 (2d Cir.), cert. denied, 382 U.S. 840 (1965).

We agree with Marathon's third contention in this aspect of the case: that restrictive words normally apply only to the nearest antecedent. United States v. Pritchett, 470 F.2d 455, 459 (D.C. Cir. 1972); Hughes v. Samedan Oil Corp., 166 F.2d 871, 873 (10th Cir. 1948). The restrictive words here are "in each participating area." They define the limits of permissible location of wells for royalty purposes. The nearest antecedent is "oil wells shut in for conservation purposes." The restrictive phrase therefore, applies to this clause. Marathon asserts this application exhausts the effect of the restrictive words. Its analysis fails at this point, however, since we decided previously "an oil well shut in for conservation purposes" includes "repressuring wells." The restrictive words apply to both.

Having applied pertinent rules of construction to the disputed clause, we do not agree with Marathon's interpretation - we find that the proper unambiguous construction of the clause is:

> Subject to approval of the Supervisor, in accordance with the operating regulations,
>
> all oil wells shut in for conservation purposes in each participating area, including productive oil wells with excess gas-oil ratios and any and all wells of any character actually used for repressuring or recycling,
>
> shall be counted as producing oil wells * * *.

This construction applies the limiting words "in each participating area," to repressuring wells. Any and all wells actually used for repressuring or recycling, must, therefore, be in the participating area to be counted as a producing well for royalty purposes.

Marathon suggests that this interpretation is contrary to the purpose of the unit agreement. It states that the broad purpose of the unit agreement is to maximize recovery of oil and gas deposits in the unit. It alleges that "[t]o exclude otherwise countable wells on the artificial basis of location runs counter to the overriding purpose and prevading [sic] policy of the Oregon Basin Unit Agreement which is to encourage, not discourage, the maximum recovery of oil and gas without waste." (Appellant's Memorandum Brief at 19.)

We disagree with this contention for several reasons. First, the unit agreement requires the operator to maximize recovery of the unitized substances without regard to royalties. 2/ The placement of a repressuring well based on royalty rather than geological

---

2/ The unit agreement states:
"16. CONSERVATION: Operations hereunder and production of unitized substances shall be conducted to provide for the most economical and efficient recovery of unitized substances to the end that maximum efficient yield may be obtained without waste as defined by or pursuant to State or Federal law or regulations, and production of unitized substances shall be limited to such production as can be put to beneficial use with adequate realization of fuel and other values."

considerations would violate the unit agreement since the conservation measures are not explicitly or implicitly tied to the operator's royalties. Marathon's construction of the lease is also contrary to judicial interpretation of the purpose of federal leasing. "A second objective [after conservation] of the federal oil and gas lease is, of course, to maximize revenue for the lessor." Standard Oil Co. v. Hickel, 317 F. Supp. 1192, 1195 (D. Alas. 1970), aff'd, 450 F.2d 493 (9th Cir. 1971). See California Co. v. Udall, 296 F.2d 384, 388 (D.C. Cir. 1961). The unit agreement here is consistent not only with the goal of conservation, but also with the goal of revenue maximization. The California Company case also involved interpretation of a royalty rate clause in a federal oil and gas lease. One factor used by that court in rejecting the oil company's claim for lower royalty rates was the absence of any showing that the Department's interpretation would deprive the company of all profit or make a successful operation impossible. 296 F.2d at 388. Here, under our ruling, as in California Company, the ability of the lessee to operate at a profit is unquestioned, and is yet another indicia of the reasonableness and consonance of our interpretation with the purposes of the agreement and federal oil and gas leasing in general. We also note that in general, the unit agreement as a whole carefully distinguishes between participating and nonparticipating lease areas.

As its fourth contention, Marathon suggests, that in interpreting agreements great weight should be given to the manner in which an agreement is performed, especially if the performance occurs before the dispute arises. E.g., Boswell v. Chapel, 298 F.2d 502, 506 (10th Cir. 1961). This rule, known as the doctrine of practical construction, does not apply however, unless the agreement itself is ambiguous. Amoco Production Co., supra at 218-19. See Tri-Cor, Inc. v. United States, 458 F.2d 112, 126 (Ct. Cl. 1972); 4 S. WILLISTON, ON CONTRACTS, § 623 at 797 (3rd ed. 1961). The doctrine is not applicable in this case.

An assertion of ambiguity, to be cognizable, must be based on more than possible contestability in the instrument. An agreement is not made ambiguous "merely because the parties disagree as to its meaning when the disagreement is not based on reasonable uncertainty of the meaning of the language used." Tri-Cor, Inc. supra, at 126. Under this rule an assertion does not substitute for a true lack of clarity. "Words do not become ambiguous simply because lawyers or laymen contend for different meanings or even though their construction become[s] the subject matter of litigation." Thomas v. Continental Casualty Co., 225 F.2d 798, 801 (10th Cir. 1955). Before concluding that an agreement is ambiguous, the disputed portion should be read in light of the entire instrument and its avowed purpose. Normal meanings of the language and ordinary grammatical constructions should also be applied before concluding that ambiguity exists. See Tri-Cor, Inc., supra, at 126; Gerhart v. Henry Disston and Sons, Inc., 290 F.2d 778, 784 (3d Cir. 1961); Kansas Farm Bureau Insurance Co. v. Cool, 205 Kan. 567, 471 P.2d 352, 356 (Sup. Ct. 1970). To determine ambiguity of a portion of an agreement without applying these considerations could create ambiguity where none exists.

We have already carefully reviewed the disputed clause in light of rules of contract construction and in light of the purpose of the unit agreement and concluded that the proper unambiguous interpretation of the contract is contrary to the alleged practical construction by the parties. Since there is no ambiguity here, we can give no weight to the alleged practical construction of the unit agreement. See, e.g., F. D. Rich Co. Inc. v. Wilmington Housing Authority, 392 F.2d 841, 842 (3d Cir. 1968).

We hold that the Oregon Basin unit agreement does not permit repressuring wells located outside the participating area to be counted as a well in computing the variable royalty rate.

The final argument raised is that because the Survey acquiesced in Marathon's interpretation of the unit agreement by accepting lower royalties, the government, in effect, is estopped from requesting the retroactive payments or correctly interpreting the agreement in the future. Marathon denies that the reasons given by the Survey - inadequate personnel and money to correctly audit the royalty payments - are adequate to avoid an estoppel. The government is not, however, estopped from receiving royalty payments it is owed, even where lower payments have been accepted in the past, unless the lower payments are authorized. Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970). The rule prevents government employees from overriding valid statutes, regulations or contracts by incorrect or unauthorized acts. Id. Amoco Production Co., supra at 215. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power and Light Co. v. United States, 243 U.S. 389, 409 (1917). Here, the unit agreement did not authorize any government employee to accept a royalty payment calculated by including repressuring wells located outside the participating area. The "acquiescence" by the Survey in accepting the lower royalty payments was both incorrect and unauthorized and cannot bind the government. Id. 43 CFR 1810.3.

We are aware that despite the prevailing general rule that the government cannot be estopped by the unauthorized acts of its employees under a few extraordinary circumstances that rule has been pierced. For example, in Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970), an oil and gas lease offer by Mary Brandt and Natalie Shell was rejected by the California State Office of the Bureau of Land Management. The decision rejecting the offer notified the applicants of their right to appeal, but also told them they could remedy the error in their offer without losing their filing priority by resubmitting new lease forms. In reliance on this latter procedure, the applicants chose not to appeal, but submitted new lease forms. A second applicant, Raymond Hansen, filed for the same lands after the original offer, but before the new offer was filed. His offer was rejected and he appealed. The Secretary of the Interior concluded that the State Office had no authority to give the amended filing retroactive effect; that the unauthorized promise to give retroactive effect was "regrettable," but not binding on him; that Brandt and Shell lost their right to appeal the local office's decision by not timely filing a notice of appeal; and that Hansen was entitled to the lease. Raymond J. Hansen, A-30179 (March 5, 1965).

One of the grounds relied on by the Circuit Court in reversing the Secretary's decision was that since Brandt and Shell were incorrectly informed a new lease offer could be filed which would retain their filing priority, the original decision of the State Office did not adequately inform them that they were adversely affected by the decision. This is the "promise" the Secretary's decision disavowed and termed "regrettable." The court discussed whether this misstatement was binding on the Secretary:

> * * * Not every form of official misinformation will be considered sufficient to estop the government. See 2 K. Davis, Administrative Law Treatise Section 17.01 et seq. Yet some forms of erroneous advice are so closely connected to the basic fairness of the administrative decision making process that the government may be estopped from disavowing the misstatement. * * *
>
> * * * * * * *
>
> * * * We conclude that the collateral estoppel doctrine can properly be applied in this situation where the erroneous advice was in the form of a crucial misstatement in an official decision. The Secretary was understandably concerned that the estoppel doctrine can have a deleterious effect on administrative regularity. However, administrative regularity must sometimes yield to basic notions of fairness.
>
> * * * * * * *
>
> We would have a much different case if the booby trap unwittingly set for Mrs. Brandt and Mrs. Shell had somehow hurt the government. Bad advice cannot ordinarily justify giving away to individuals valuable government assets. This is no such case.

427 F.2d at 56-57. The Brandt` decision confirms the general rule that the government is not bound by the unauthorized statements of its employees, but sanctions an exception to that rule where: (1) the erroneous advice is in the form of a crucial misstatement in an official decision; (2) the result of the misstatement violates standards of fundamental fairness; and (3) the public's interest is not unduly damaged by the imposition of the estoppel. See also United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir. 1973); Gestuvo v. District Director of United States Immigration & Naturalization Service, 337 F. Supp. 1093 (C.D. Cal. 1971).

The Brandt rule clearly does not apply to this case. First, there was no crucial misstatement in an official decision. Construing the facts most favorably to Marathon, at the most there was unofficial, informal acquiescence by the Survey in accepting the payments, without requesting a recomputation of the amounts until 1969. Second, the effect of the "reliance" does not violate fundamental fairness. Marathon does not allege that it cannot continue to make a reasonable profit or continue to operate the field under our ruling. Third, Brandt involves a misstatement which deprived a person of a right granted by law. Marathon, is not being deprived of any right. To the contrary, the law is now being properly enforced. Fourth, unlike in Brandt, where the government was only a stakeholder, this case involves harm to the public's interest in the form of lost revenue. We hold that the government is not estopped from demanding the recomputations and deficiency payments. See Robertson v. Udall, 349 F.2d 195 (D.C. Cir. 1965); United States v. Ohio Oil Co., 163 F.2d 633 (10th Cir. 1947), cert. denied, 333 U.S. 833 (1948); Sinclair Oil & Gas Co., 75 I.D. 155 (1968).

That the Brandt doctrine of estoppel is not applicable to the facts of this case is strongly supported by the decision in McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd per curiam Civil No. 73-1520 (D.C. Cir. March 12, 1974). There, the appellants alleged that the Department of the Interior was estopped from changing a longstanding regulation implementing section 17 of the Mineral Leasing Act of 1920, (41 Stat. 443), as amended, 30 U.S.C. § 226(a) (1970). The original regulation became effective in 1921. Instructions, 48 L.D. 98, 99 (1921). In 1967, the Department concluded that the practice authorized by the 1921 Instruction was clearly erroneous and contrary to the ordinary reading of the statute. Subsequently, departmental regulations were amended to reflect this decision. 43 CFR 3110.1-8. In response to appellant's contention that this change in the regulation was impermissible, the court concluded:

> It is well settled that courts are to show great deference to the administrative construction of a statute where the statutory language is reasonably susceptible to more than one interpretation. Udall v. Tallman, supra, 380 U.S. 16-18, 85 S.Ct. 792; Gulf Oil Corporation v. Hickel, 140 U.S.App.D.C. 368, 372, 435 F.2d 440, 444 (1970).
>
> However, should an administrative statutory interpretation or regulation however long standing be clearly erroneous or contrary to the manifest intent of the statute it purports to construe or implement, such interpretation or regulation will not be upheld by a court. Estate of Sanford v. Commissioner of Internal Revenue, 308 U.S. 39, 52-54, 60 S.Ct. 51, 84 L.Ed. 20 (1939), rehearing denied, 308 U.S. 637, 60 S.Ct. 258, 84 L.Ed. 529; District of Columbia v. Payne, 126 U.S.App.D.C. 47, 51, 374 F.2d 261, 265 (1966).
>
> Nor is the administrative agency itself estopped by its former interpretation of a statute, however long standing, from correcting that which it presently feels to be clearly erroneous. As

> Mr. Justice Brennan, speaking for the Court, said in Automobile Club of Michigan v. Commissioner of Internal Revenue, 353 U.S. 180, 183, 77 S.Ct. 707, 709, 1 L.Ed.2d 746 (1957):
>
> > The Commissioner's earlier rulings were . . . based upon a mistake of law . . .
> >
> > *   *   *   *   *   *
> >
> > . . . The doctrine of equitable estoppel is not a bar to [his] correction . . . of [that] mistake of law.

353 F. Supp. at 1012.

We think that the reasoning in McDade is even more appropriate to the facts of this case where there was approval of well locations and acceptance of rental payments without any formal ruling or decision applying the provision of the unit agreement in question. Estoppel cannot prevent the Department from applying the clear unambiguous meaning of the unit agreement in this case. The Department's decision to require corrected reports and to recalculate royalty payments is not limited by any prior incorrect and unauthorized acts. Atlantic Richfield v. Hickel, supra. A fortiori it is not limited here by any lapse or neglect of Survey employees.

Marathon has requested that this Board grant oral argument pursuant to its discretionary authority, 43 CFR 4.25. Appellant, in its brief, has presented its reasons for overturning the decision of the Survey. These have been considered. We see no useful purpose for an oral argument, nor would the Board's consideration of the case be facilitated thereby. Therefore, the request for oral argument is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge